

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: Squad #12	CCRB Case #: 201801809	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/15/2018 5:59 PM	Location of Incident: Intersection of Rosedale Avenue and Story Avenue	Precinct: 43	18 Mo. SOL 8/15/2019	EO SOL 8/15/2019	
Date/Time CV Reported Tue, 03/06/2018 3:11 PM	CV Reported At: CCRB	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 03/06/2018 3:11 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Heinz	09897	953959	PSA 8
2. SGT Wilbert Rodriguez	04389	919641	PSA 8
3. POM Jimmie Moore	25780	925771	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A.SGT Wilbert Rodriguez	Abuse: Sergeant Wilbert Rodriguez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.SGT Wilbert Rodriguez	Abuse: Sergeant Wilbert Rodriguez interfered with § 87(2)(b)'s use of a recording device.	
C.POM Michael Heinz	Discourtesy: Police Officer Michael Heinz spoke discourteously to § 87(2)(b)	
D.POM Michael Heinz	Off. Language: Police Officer Michael Heinz made remarks to § 87(2)(b) based upon her perceived sexual orientation.	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

On February 15, 2018, § 87(2)(b) a reporting non-witness and civil attorney, filed this complaint via e-mail with the IAB Command Center on behalf of his clients § 87(2)(b) and § 87(2)(b) generating log number 18-06498. The CCRB received this case on March 6, 2018.

On February 15, 2018, at approximately 5:59 p.m., Sgt. Wilbert Rodriguez, PO Michael Heinz, and PO Jimmie Moore, of the PSA 8 Anti-Crime unit, stopped § 87(2)(b)'s vehicle, containing § 87(2)(b) and § 87(2)(b) near the intersection of Rosedale Avenue and Story Avenue, in the Bronx (**Allegation A: Abuse of Authority**, § 87(2)(g)). Sgt. Rodriguez interfered with § 87(2)(b)'s use of a recording device (**Allegation B: Abuse of Authority**, § 87(2)(g)). PO Heinz allegedly spoke discourteously to § 87(2)(b) (**Allegation C: Discourtesy**, § 87(2)(g)). PO Heinz allegedly made remarks to § 87(2)(b) based on her perceived sexual orientation (**Allegation D: Offensive Language**, § 87(2)(g)). § 87(4-b), § 87(2)(g). No arrests or summonses resulted from this incident.

Video footage searches were conducted via TARU, GoogleMaps, and the body-worn camera (BWC) list. However, all searches yielded negative results. Additionally, while § 87(2)(b) presented cell phone video during this in-person statement which captured a portion of this incident, he ultimately refused to provide it to the CCRB. Therefore, no relevant video footage for this case was obtained.

IAB's Housing Bureau of Investigations Unit conducted a concurrent investigation for this incident under Misconduct case #18-0500. However, the status of their investigation is currently unknown.

Allegation A – Abuse of Authority: Sergeant Wilbert Rodriguez stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that officers stopped § 87(2)(b)'s vehicle on February 15, 2018, and that no summonses were issued.

In his sworn statement, § 87(2)(b) alleged that Sgt. Rodriguez told him that he had been stopped because he had his cell phone in his hand. § 87(2)(b) denied to the investigation having his phone in his hand at any point while driving and instead alleged that § 87(2)(b) who was sitting in the passenger's seat, was on the phone for navigational purposes (Board Review 01).

In his sworn statement, § 87(2)(b) § 87(2)(b)'s brother, alleged that, prior to being pulled over, § 87(2)(b) was holding a cell phone in the rear driver's seat for navigational purposes. § 87(2)(b) denied that § 87(2)(b) had his phone in his hand while driving. During his in-person statement, § 87(2)(b) presented cell phone video of the incident. The recording was played on-record, and an individual, whom § 87(2)(b) identified as PO Moore, is heard saying that the reason for the stop was because § 87(2)(b) was holding a phone in his hand while driving. Another individual, who § 87(2)(b) identified as § 87(2)(b) is heard responding, "I was on my phone for GPS." § 87(2)(b) was ultimately uncooperative in providing the video to the CCRB, instructing the CCRB to obtain the video through § 87(2)(b) who failed to provide the video upon multiple requests (Board Review 02).

§ 87(2)(b) and § 87(2)(b) in unsworn phone statements, further denied that § 87(2)(b) was on his phone during the drive. Instead, § 87(2)(b) alleged that § 87(2)(b) was the individual on his phone prior to being pulled over, while § 87(2)(b) attested this action to § 87(2)(b). Both individuals were ultimately uncooperative with providing sworn statements to the investigation (Board Reviews 03 and 04).

PO Heinz, Sgt. Rodriguez, and PO Moore all consistently testified that they observed § 87(2)(b) driving while holding a cell phone in his hand. PO Heinz stated that he used discretion in releasing § 87(2)(b) without issuing him a summons for being on his phone (Board Reviews 05, 06, and 07).

No person shall operate a motor vehicle while using any portable electronic device while the vehicle is in motion, including while temporarily stationary. NYS Vehicle and Traffic Law, Article 33, Section 1225-d. Engaging in this activity is prohibited and is considered a traffic infraction. Id (Board Review 08).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Abuse of Authority: Sergeant Wilbert Rodriguez interfered with § 87(2)(b)'s use of a recording device.

§ 87(2)(b) who was sitting in the front passenger's seat, alleged that § 87(2)(b) provided his learner's permit to Sgt. Rodriguez, who then returned to the police vehicle. When Sgt. Rodriguez returned, § 87(2)(b) began recording him with his cell phone. § 87(2)(b) asked Sgt. Rodriguez questions pertaining to the stop, but Sgt. Rodriguez told § 87(2)(b) to put his phone down and shone his flashlight into the phone's camera. § 87(2)(b) put his phone down as a result. In the cell phone video that § 87(2)(b) presented in his in-person statement, a voice whom § 87(2)(b) identified to be PO Heinz is heard asking, "Is he recording?" Another voice, who § 87(2)(b) identified to be Sgt. Rodriguez then states, "Put your phone down." § 87(2)(b) is heard responding, "I can't record? I'm a put it down." As previously stated, § 87(2)(b) ultimately refused to provide this video to the CCRB but an audio recording of the video was played during the sworn statement (Board Review 02).

§ 87(2)(b) alleged that § 87(2)(b) who was sitting in the front passenger's seat, was recording the incident when PO Heinz flashed his flashlight towards § 87(2)(b) and told him, "Put the fucking phone down. You must not have learned from the last one. Still with the recording, huh?" § 87(2)(b) who was trying to hide the fact that he was recording, told PO Heinz, "I'm not even recording." § 87(2)(b) believed that, because of PO Heinz's actions, § 87(2)(b) got scared and stopped recording. § 87(2)(b) did not make any interference allegation against Sgt. Rodriguez (Board Review 01).

§ 87(2)(b) in a brief unsworn phone statement, alleged that § 87(2)(b) was recording the incident when Sgt. Rodriguez told him to stop doing so. § 87(2)(b) stopped recording at Sgt. Rodriguez's request. § 87(2)(b) who also provided an unsworn phone statement, stated that an officer whom he identified as "Det. Martinez" told § 87(2)(b) who

§ 87(2)(b) in an unsworn phone statement, stated that an officer told § 87(2)(b) “Are you just going to pull off with my foot there?” When asked if there was any profanity used during this statement, § 87(2)(b) believed there was, but was ultimately unsure. § 87(2)(b) who also provided an unsworn phone statement, did not provide any testimony regarding this allegation. Both § 87(2)(b) and § 87(2)(b) as previously stated, were ultimately uncooperative with providing the investigation with a sworn statement (Board Reviews 03 and 04).

PO Heinz testified that, upon handing § 87(2)(b) s documentation back to him through the driver’s side window, § 87(2)(b) began driving away before PO Heinz had taken his hand out of the window. The rear driver’s side tire ran over PO Heinz’s foot, and PO Heinz told § 87(2)(b) to watch out for his foot. PO Heinz denied saying, “Watch out for my fucking foot,” and denied using any profanity in advising § 87(2)(b) to watch out for his feet (Board Review 05).

PO Moore denied telling § 87(2)(b) “Watch out for my fucking foot,” and denied hearing another officer do so. PO Moore denied that § 87(2)(b) ran over his or another officer’s foot prior to leaving the location. Sgt. Rodriguez denied hearing PO Heinz say, “Watch out for my fucking foot,” or use any other profanity (Board Reviews 06 and 07).

The portion of the incident at which this allegation was alleged to have occurred was not captured on § 87(2)(b) s cell phone footage.

Although § 87(2)(b) made this allegation against PO Moore, PO Heinz acknowledged being the officer who advised § 87(2)(b) to watch out for his foot. Therefore, this allegation was pleaded against PO Heinz.

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Offensive Language: Police Officer Michael Heinz made remarks to § 87(2)(b) based on her perceived sexual orientation.

In his in-person statement, § 87(2)(b) alleged that PO Heinz told § 87(2)(b) “You’re a fucking wannabe boy. You’re always in guy’s shit. That’s why I’m always pulling you over. You need to stay in your lane because your dyke-ass is always with guys. Go be with your girls. You don’t even like dick so why are you going around with a whole bunch of dick all the time?” § 87(2)(b) further alleged that PO Heinz called § 87(2)(b) a “fucking dyke” (Board Review 01).

During her brief unsworn phone statement, § 87(2)(b) denied that any officer used any profanities towards her or made any “offensive” comments towards her. Further, § 87(2)(b) was uncooperative with providing a sworn statement to the investigation (Board Review 03).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]

Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation.

- § 87(2)(b) [REDACTED]

- § 87(2)(b) [REDACTED]

- § 87(2)(b) [REDACTED]

- According to OCA, § 87(2)(b) has no history of convictions in New York City (Board Review 17).
- § 87(2)(b) and § 87(2)(b) filed a Notice of Claim with the City of New York claiming illegal searches, property damage, and physical and psychological trauma, and is seeking an unspecified amount as redress. On September 24, 2018, a request was submitted with the Comptroller's Office inquiring about a 50H hearing. That request is still pending as of the writing of this report (Board Reviews 18 and 19).

Civilian and Subject Officer CCRB Histories

- § 87(2)(b)
[REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b)
[REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b)
[REDACTED]
 - [REDACTED]
 - [REDACTED]
- § 87(2)(b)
[REDACTED]
 - [REDACTED]
 - [REDACTED]
- PO Heinz has been a member-of-service for five years and has been a subject in nine CCRB complaints and 29 allegations, of which one was substantiated:

- CCRB case 201709949 involved a substantiated allegation of physical force against PO Heinz. The Board recommended charges, and the NYPD has not yet imposed discipline.
- § 87(2)(g) [REDACTED]
- Sgt. Rodriguez has been a member-of-service for 21 years and has been a subject in six CCRB complaints and 19 allegations, none of which have been substantiated. [REDACTED]
- PO Moore has been a member-of-service for 18 years and has been a subject in 11 CCRB complaints and 27 allegations, four of which were substantiated:
 - CCRB case 201407548 involved a substantiated allegation of interfering with a recording device against PO Moore. The Board recommended formalized training, and the NYPD imposed a penalty of formalized training.
 - CCRB case 201602039 involved substantiated allegations of use of pepper spray and discourtesy against PO Moore. The Board recommended Command Discipline “A”, and the NYPD imposed a penalty of Command Discipline “B.”
 - CCRB case 201709949 involved a substantiated allegation of use of pepper spray against PO Moore. The Board recommended charges, and the NYPD has not yet imposed discipline.

Squad No.: 12

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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